

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE

WRIT PETITION NO.7539 OF 2004

Shri Vijaykumar Devraj Mehta

Petitioner

vs.

1.The Chief Commissioner of  
Income Tax & anr.

Respondents

Mr.Vipul Joshi with Mr.Piyush Shah for the petitioner.

Mr.R.V.Desai, senior counsel along with Ms.S.V.  
Bharucha for the respondents.

**CORAM : R. M. LODHA &  
J.P. DEVADHAR, JJ.**

**DATED : 25th October 2004**

**P.C.**

Heard Mr.Vipul Joshi, the learned counsel for the petitioner and perused the order dated 17th February 2003 passed by the Chief Commissioner of Income Tax rejecting the petitioner's application for waiver of interest levied under Sections 234A, 234B and 234C of the Income Tax Act. It is not in dispute that on 16th November 1994 survey action under Section 133A of the Income Tax Act was carried out at the office premises of the petitioner and the petitioner declared the amount of Rs.10,00,000/- as additional income for the assessment year 1994-95. On 20th March 1995, the return of income for assessment year 1994-95 was filed by the petitioner declaring total income at Rs.10,45,345/-. The assessing officer made various additions and disallowances and assessed the total income at Rs.70,97,360/- vide

assessment order dated 27th March 1997. The Commissioner of Income Tax (Appeal) partially allowed the petitioner's appeal and modified the total income of the petitioner by its order dated 30th March 1998. In compliance of the order of the Commissioner of Income Tax (Appeals) the assessing officer passed an order on 4th May 1998 revising the total income of the petitioner at Rs.12,14,430/- and issued notice of demand for Rs.9,21,059/- including interest under sections 234A, 234B and 234C amounting to Rs.4,00,514/- . The petitioner made an application to the Chief Commissioner of Income tax for waiver of interest on 18th February 1999. The said application came to be rejected by the Chief Commissioner of Income Tax vide impugned order. The Chief Commissioner of Income Tax observed that the assessee had already earned income which he failed to disclose in the return of income. The aforesaid observation is unassailable and in view thereof the application made by the petitioner for waiver of interest was liable to be rejected. The petitioner's case was not covered by any of the clauses of the CBDT notification dated 23rd May 1996 upon which strong reliance was placed by the learned counsel for the petitioner. We find that in the light of the facts obtaining in the present case, clause (c) of the aforesaid notification is not attracted.

2. The impugned order does not call for any interference.

3. Writ petition is dismissed in limine.

**(R.M. LODHA,J.)**

**(J.P. DEVADHAR,J.)**